

No. 13-1493 RV

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party's pleading, taken as true, entitles another party to a favorable decision.

### **Findings of Fact**

Based upon the complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. Prior to July 11, 2013, Richman owned a Lincoln motor vehicle (“the Lincoln”) and a Dodge motor vehicle (“the Dodge”).
2. On July 11, 2013, Richman renewed the registration and license plates on the Lincoln.
3. The Lincoln was registered as a passenger vehicle.
4. On July 25, 2013, Richman sold both the Lincoln and the Dodge and purchased a Ford motor vehicle (“the Ford”). Richman transferred the license plates from the Dodge to the Ford.
5. At some point after July 25, 2013, Richman returned the plates from the Lincoln to the Director and requested a refund of \$48.50 for those plates/tabs.
6. On August 15, 2013, the Director issued a final decision denying Richman’s refund request.

### **Conclusions of Law**

This Commission has jurisdiction over appeals from the Director’s final decisions.<sup>1</sup> Our duty in a tax case is not merely to review the Director’s decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer’s lawful tax liability for the period or transaction at issue.<sup>2</sup> Richman argues that a refund is appropriate because the fees were paid for license plate tabs that will never be used. The Director argues that no provision of law authorizes him to issue a refund under these circumstances. The Director is correct.

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<sup>1</sup>Section 621.050.1, RSMo 2000.

<sup>2</sup>*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. 1990).

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.<sup>3</sup> “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”<sup>4</sup>

Section 301.140<sup>5</sup> provides:

3. License plates may be transferred from a motor vehicle which will no longer be operated to a newly purchased motor vehicle by the owner of such vehicles. The owner shall pay a transfer fee of two dollars if the newly purchased vehicle is of horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, not in excess of that of the vehicle which will no longer be operated. When the newly purchased motor vehicle is of greater horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a greater fee is prescribed, the applicant shall pay a transfer fee of two dollars and a pro rata portion of the difference in fees. When the newly purchased vehicle is of less horsepower, gross weight or (in the case of a passenger-carrying commercial motor vehicle) seating capacity, for which a lesser fee is prescribed, the applicant shall not be entitled to a refund.

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8. Upon the transfer of ownership of any currently registered motor vehicle wherein the owner cannot transfer the license plates due to a change of vehicle category, the owner may surrender the license plates issued to the motor vehicle and receive credit for any unused portion of the original registration fee against the registration fee of another motor vehicle. Such credit shall be granted based upon the date the license plates are surrendered. No refunds shall be made on the unused portion of any license plates surrendered for such credit.

Section 301.140.3 allows a reduced transfer fee when license plates are transferred from a motor vehicle that will no longer be operated to a newly purchased motor vehicle by the owner

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<sup>3</sup>*Community Fed. Sav. & Loan Ass’n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. 1990).

<sup>4</sup>*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

<sup>5</sup> RSMo Cum. Supp. 2012.

of such vehicles. Based upon the facts before us, this subsection does not apply to Richman. Richman transferred a set of plates from the Dodge to the Ford and could not have transferred a second set of plates to the new vehicle. This section also expressly does not allow a refund.

Section 301.140.8 allows a credit for the unused portion of the original registration fee against the registration fee of another motor vehicle upon transfer of ownership of a vehicle when the owner cannot transfer the license plates due to a change of vehicle category. Based upon the facts before us, this subsection does not apply to Richman. This subsection also expressly does not allow a refund.

Section 301.121<sup>6</sup> provides for a refund of certain amounts paid when a license plate is surrendered. This section, however, does not apply to Richman because it only applies to commercial vehicles registered in excess of fifty-four thousand pounds. The Lincoln was registered as a passenger vehicle, not a commercial vehicle.

We have found no provision of law allowing a refund to Richman. Neither the Director nor this Commission can change the law.<sup>7</sup> We have no authority to allow a refund under these circumstances.

### **Summary**

Richman is not entitled to a refund of fees paid for the renewal of license plates to her Lincoln motor vehicle.

SO ORDERED on October 10, 2013.

\s\ Sreenivasa Rao Dandamudi  
SREENIVASA RAO DANDAMUDI  
Commissioner

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<sup>6</sup> RSMo Cum. Supp. 2012.

<sup>7</sup> *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. 1985).